

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GERTRUDE H. WOOD)

For Appellant: Jack M. Howard, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H, Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Gertrude H. Wood to a proposed assessment of additional personal income tax in the amount of \$212.50 for the year 1954.

The facts, which are not in dispute, are that on November 27, 1954, Appellant was a guest of the El Mirador Hotel in Palm Springs, California; that she there attached a silk bag containing jewelry of a value in excess of \$10,000 to her underclothing; that the individual items of jewelry were two diamond rings of approximately thirteen carats each, one ring containing a diamond of about three carats and a pearl of equal size, and a diamond bracelet; that the bag and its contents disappeared from the person of Appellant during a period when she was at all times on the hotel premises; that the loss was Mediatly reported to the police who made a thorough and well-publicized search and investigation; that the jewelry was not found; and that it was not insured or otherwise compensated for.

Appellant deducted \$10,000 for the loss on her return for 1954 pursuant to section 17306 of the Revenue and Taxation Code (now 17206) which allowed a deduction in the case of an individual for a loss "of property not connected with the trade or business if the loss arises . . . from theft" and was not ". . .compensated for by insurance or otherwise."

The Franchise Tax Board disallowed the deduction and opposes this appeal on the sole ground that the circumstances do not amount to proof that the jewels were stolen but merely raise a suspicion of theft.

While the burden of proof to establish a deductible loss is on the Appellant (Burnet v. Houston, 283 U.S. 223), it has been held that

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such proof in the case of an alleged theft may be circumstantial. (W. Roosevelt Thompson, BTA Memo., Dkt. No. 102569, Feb. 12, 1942.) In the latter case it was held that an acceptable circumstantial case of theft had been made out where the taxpayer discovered that during his absence his gold cigarette lighter had disappeared from his table at a night club. In another case, Warner L. Jones, 24 T.C. 525, the Tax Court allowed a deduction for a loss by the Appellant where a pin which was locked in a cabinet in taxpayer's home disappeared at about the time the maid resigned even though neither the maid nor any other person was formally accused of stealing the pin.

A case which is more factually analogous to that of Appellant's is Mary Frances Allen, 16 T.C. 163, where the taxpayer was wearing on her outer clothing a diamond pin about the size of a five cent piece. While visiting the Metropolitan Museum of Art, the pin disappeared from her person and was not recovered by an immediate search made by her sister or through being turned in by other visitors or employees of the Museum. Nine days later the loss was reported to the police, who handled the matter as a lost property case,

The court applied the test that "If the reasonable inferences from the evidence point to theft, the proponent is entitled to prevail. If the contrary be true and reasonable inferences point to another conclusion, the proponent must fail,, If the evidence is in equipoise preponderating neither to the one nor the other conclusion, petitioner has not carried her burden." With three judges dissenting, it was held that the taxpayer had not met the burden of proving that the pin had been stolen.

We are of the opinion, however, that in the case before us Appellant has met the burden of proof in that reasonable inferences from the evidence point to theft. It is not necessary to speculate on the possibility that the jewelry was removed from the person of Appellant by stealth because the evidence points to theft even if the jewelry was initially lost by dropping unaided from the clothing of Appellant. This is because very much stronger proof has been developed than in the Allen case, supra. For instance, (1) because of the difference in size between the tiny pin in the latter case and Appellant's bagful of jewelry, the possibility that no one found the pin is much greater, (2) the pin in the Allen case could very easily have been regarded as "costume" jewelry by a finder, not justifying an effort to return it, while Appellant's jewelry could not have been so mistaken by a reasonable person, and (3) the police in the instant matter were immediately informed and made a thorough search and investigation which it is reasonable to assume would have resulted in locating the property if no one had taken it. Normally, an honest finder would have notified the searchers or the hotel officials of his discovery.

Accordingly, it may reasonably be inferred that the jewelry was lost by Appellant and found by some person unknown who deliberately retained it without first having complied with section 485 of the Penal Code, which provides that:

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One who finds lost property under circumstances which give him **knowledge of** or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft.

ORDER

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Gertrude H. Wood to a proposed assessment of additional personal income tax in the amount of \$212.50 for the year 1954 be and the same is hereby reversed.

Done at Sacramento, California this 20th day of September, 1962,
by the State Board of Equalization.

Gea. R. Reilly, Chairman

John W. Lynch, Member

Richard Nevins, Member

Paul R. Leake, Member

_____, 'Member

Attest:

Dixwell L. Pierce . Secretarv